MINUTES

Civilian Review Board Bascom Room—Eugene Public Library—100 West Tenth Avenue

October 8, 2013 5:30 p.m.

PRESENT: Steven McIntire, Chair; George Rode, Eric Von Houten. Debra Velure, Civilian Review Board members; Mark Gissiner, Vicki Cox, Police Auditor's Office; Sgt. Scott Vinje, Eugene Police Department..

ABSENT: Bernadette Conover, Vice Chair; Snell Fontus, Chris Wig.

I. AGENDA AND MATERIALS REVIEW

Mr. McIntire convened the CRB at 5:30 p.m. There were no revisions to the agenda.

Mr. McIntire proposed moving the case review scheduled for tonight to the November 2013 meeting when more CRB members would be present. Following a brief discussion, there was consensus to discuss the case tonight and table a decision until the November meeting.

II. MINUTES APPROVAL—July 9, 2013

In response to Mr. McIntire, Ms. Cox noted the CRB did not meet in August and the CRB met jointly with the Police Commission in September.

Mr. McIntire observed the CRB did review a case at the September meeting, and asked if minutes would be available for that meeting. He asked staff to capture the outcome of the case review for the CRB if minutes had not been taken at the meeting.

Mr. McIntire deemed the minutes approved by acclamation.

III. PUBLIC COMMENT

Carol Berg-Caldwell stated she had alerted the CRB about mug shots being circulated by private websites and publications at the CRB's January 2013 meeting. She reviewed a recent article in the New York Times which referenced the work of Governor Kitzhaber and a State Representative. The article also reported that in many areas of the country, people were being exploited by the private websites and publications. She commended the State of Oregon for passing legislation addressing this issue in June 2013. She also commended Lane Country Sheriff's Deputy Sgt. Dan Buckwald for his work in pulling the mug shots of people on road crews. She had heard CRB members express frustration when reviewing cases where no incar video (ICV) was available. She reviewed two court cases related ICV and distributed copies of a complaint she recently filed with Mark Gissiner related to ICV. She commended Chief Kerns for acquiring 60 new cameras and monitors.

Deb Frisch thanked Mr. McIntire for talking with her at the September CRB/Police Commission joint meeting. She reviewed a Register Guard letter to the editor and discussed the current federal sequester and partial government shutdown. She proposed that the Washington, D.C. police investigate whether members

of Congress were violating criminal statutes. She believed criminal prosecution of government employees for official misconduct or other offenses was an underutilized method of influencing the government. She believed there was an epidemic of criminal behavior among law makers and law enforcers in Lane County and Marion County. She asked CRB members to convey a message to the Eugene City Council to advise City Manager Jon Ruiz that his decision to outsource the City Prosecutor job to Lane County District Alex Gardner was a poor decision.

IV. COMMENTS FROM BOARD MEMBERS, HUMAN RIGHTS COMMISSION LIAISON AND POLICE COMMISSION LIAISON

Ms. Velure said she would not attend the November 2013 CRB meeting.

Mr. Rode encouraged feedback from CRB members related to policy adjustments that should be taken to the Police Commission. The Police Commission was scheduled to review the ICV policy.

Mr. McIntire thanked Ms. Berg-Caldwell for comments and asked Mr. Rode to review them.

V. CASE REVIEW—The CRB reviewed a case in which an officer alleged that another officer used a racial slur.

Mr. McIntire recommended that final adjudication reviews would take place at the November 2013 CRB meeting.

Mr. Gissiner distributed a packet of information entitled: *Case Summary—Civilian Review Board Meeting—October 8*, 2013, which provided an overview of the case.

Mr. Gissiner summarized the facts of the case:

- Officer B reported that his patrol car partner, Officer A, directed a racially offensive remark and a gang name about a group of people standing on a street corner. Officer B reported the remark approximately two weeks after it occurred.
- This was the only time the two officers were paired.
- The subject officer denied making such a comment.
- During the investigation, a third officer, Officer C, was interviewed regarding an earlier situation in which Officer A used an insensitive remark.
- Officer A surmised that there were two possible reasons that Officer B would accuse him of using a slur, that Officer A refused Officer B's request that Officer A drive the patrol vehicle; and that during an arrest, Officer B criticized Officer for damaging the patrol vehicle.
- The investigation and adjudications were based in large part on the credibility of Officer A and B, respectively.

Allegations:

- Conduct—Unbecoming Conduct—That involved Office A while riding in a Eugene patrol car with
 officer B, referred to a group of African-American males using a racial slur. (Policy 1101.1.25.C:
 You must conduct yourself, at all times, both on and off duty, in a way that reflected favorably on
 the department.)
- Courtesy—That involved Officer A while riding in a Eugene patrol car with Officer B, referred to a group of African-American males using a racial slur. (Policy 1101.1.7.C: You may not use coarse, violent, profane or insolent language or gestures. 1101.1.7.D: You are not to express any prejudice about race, politics, national origin, sexual orientation, or similar personal characteristics.)

Investigation:

Multiple interviews of Officer B were conducted. Officers A, C and D were interviewed. Officer A was the subject officer, Officer C was a witness to another event involving similar conduct and Officer D was a witness to the arrest of a suspect.

Recommended adjudication

- Conduct—Unbecoming Conduct
 - o Immediate Supervisor, Sergeant: Sustained with memo.
 - o Supervising Lieutenant: Concurred Without Memo.
 - o Supervising Captain: Sustained with Memo.
 - o Police Auditor: Sustained with Memo.
 - o Chief of Police: Concurred with Captain Without Memo.
- Courtesy
 - o Immediate Supervisor, Sergeant: Sustained with memo.
 - o Supervising Lieutenant: Concurred Without Memo.
 - o Supervising Captain: Sustained with Memo.
 - o Police Auditor: Sustained with Memo.
 - o Chief of Police: Concurred with Captain Without Memo.

Issues for the CRB

- Complaint Intake and Classification
 - o Internally reported.
 - o Classification: Allegation of Misconduct.

In response to Ms. Velure, Sgt. Vinge explained the terminology used by Officer A referred to a gang in Eugene. He concurred that use of the "N" word was the racial slur identified in this investigation.

Mr. Von Houten agreed with the allegations of unbecoming conduct and courtesy. He asked if another classification was considered.

Mr. Gissiner believed EPD considered unbecoming conduct and judgment harsh allegations.

Mr. Rode thought the complaint intake and classification was right on.

Mr. McIntire opined the truthfulness issue was not identified until the review process was completed.

Mr. Gissiner noted the burden of truthfulness was higher than unbecoming conduct and courtesy, and may have been more difficult to prove, whereas, there was sufficient evidence to support unbecoming conduct and courtesy.

Mr. Von Houten expressed concern about conduct and courtesy, which had been raised as issues previously, which illustrated a history of performance.

Mr. Rode was bothered by this case in many ways. He asserted insensitivity on one issue, such as sexism, bled across to other things. He said there was a history that was not addressed in the hiring process and Officer A needed training. The Internal Affairs and Police Auditor investigations were thorough. He believed Officer A lied to protect himself. He was bothered that so much time had passed between the actual event and when Officer B reported it. He agreed Officer A was less than truthful but there could have been better outcomes if different procedures had been used at the beginning of the investigation.

• Complaint Investigation and Monitoring

Ms. Velure noted the questioning initially was closed, emitting only yes/no answers. As the questioning became more opened ended, the officer provided more information. She would have liked to have a video of Officer A when he was being interviewed which may have provided information related to Officer A's body language and credibility.

Mr. Gissiner said he was looking for linear descriptions from each of the people involved regarding the events of the evening.

- Relevant Department Policies and Practices
 - o Unbecoming Conduct; Courtesy.

Mr. McIntire was curious about the ride along since Officer A had applied to be a Eugene police officer. He noted a racial comment was made during the ride along and reported, but it did not make it into information available for the hiring process.

Sgt. Vinge concurred the racial comment should have been passed on to the hiring process but it had not been included as a result of a miscommunication.

Mr. Gissiner opined the comment may have been caught sooner in a very structured background check during the hiring process.

Mr. McIntire averred there was a fundamental flaw in the hiring process that this behavior was not uncovered in the background check.

Mr. Gissiner suggested the best place to identify this behavior would be in the psych exam, noting Officer A had exhibited prejudice more than one time in the past, and there was fallibility in the system.

Ms. Velure asserted there should be zero tolerance for behavior that demonstrated sexual harassment and comments about race, gender, disability, socio-economic status which were fruit from the same tree.

• Policy and/or Training Considerations

Ms. Velure iterated there should be zero tolerance for prejudicial behavior. She asked how Officer A got through the hiring process.

Mr. Rode emphasized the importance to provide training to prevent undesirable behaviors from ever occurring. He asked what kind of training Officer A had received by EPD.

Mr. Von Houten stated it took about two weeks for Officer B to come forward, and it was probably one of the most difficult things he ever did while with the EPD. He suggested Officer A had "gone fishing" to see if Officer B thought like Officer A did. Mr. Von Houten asserted Officer B did the right thing by not commenting at the time Officer A made the remarks in question, and Officer B called Officer A on his behavior. It was important to reinforce EPD's zero tolerance for that type of conduct. He concluded Officer A should not be a police officer or in a position of power.

Ms. Velure suggested that Officer A came from a jurisdiction where there are gangs and double the population of Eugene, and perhaps more tolerance for prejudicial behavior. She asked if sensitivity training was available in which it was clearly explained that this type of behavior was not acceptable in EPD.

• Adjudication Recommendations

• Additional Comments and/or Concerns

Mr. McIntire said it was extremely brave of Officer B to come forward. He set an example for others within the department.

Mr. McIntire stated additional comments and the adjudication would be deferred to the November 2013 meeting.

VI. BREAK

The CRB took a short break.

VIII. AUDITOR'S REPORT

Mr. Gissiner directed CRB members to the Police Auditor weekly newsletter for detailed information. He said the Auditor's office had been very busy. He planned to schedule a meeting with the Presiding Judge and the City Prosecutor to ask them to advise his office when they saw something that was unusual. There was one case where the judge had a different perspective on a particular trial than a court observer had. Because Municipal Court is not a court of record, knowing exactly what someone said and/or meant is more difficult. This created a dilemma for his office and he wanted to have a balance. Ms. Velure cited for example a case in Multnomah County in which a judge was brought forward as a witness.

IX. SELECTION OF NOVEMBER CASE REVIEW AND TRAINING TOPIC

Mr. Gissiner suggested several cases for review at the November 2013 meeting. Mr. McIntire asked CRB members to submit suggestions for possible cases for review at the November meeting to Mr. Gissiner.

Mr. Von Houten stated the Lane County Public Health Officer, Patrick Luedtke, would give a presentation on communicable disease risks and congregate living.

X. ADJOURN

The meeting adjourned at 7:05 p.m.